

General Assembly

Amendment

January Session, 2019

LCO No. 9371



Offered by:

SEN. FASANO, 34th Dist.

SEN. WITKOS, 8th Dist.

SEN. BERTHEL, 32nd Dist.

SEN. BIZZARRO, 6th Dist.

SEN. CHAMPAGNE, 35th Dist.

SEN. BIZZARRO, 20th Dist.

SEN. MARTIN, 31st Dist.

SEN. MINER, 30th Dist.

SEN. SAMPSON, 16th Dist.

SEN. HWANG, 28th Dist.

SEN. SOMERS, 18th Dist.

To: Subst. Senate Bill No. 1 File No. 35 Cal. No. 36

"AN ACT CONCERNING PAID FAMILY AND MEDICAL LEAVE."

- Strike everything after the enacting clause and substitute the following in lieu thereof:
- 3 "Section 1. (NEW) (Effective from passage) The Insurance
- 4 Commissioner shall adopt regulations, on or before July 1, 2020, in
- 5 accordance with the provisions of chapter 54 of the general statutes, to
- 6 establish and implement standards for individual and group short-
- 7 term disability and family leave income protection coverage for
- 8 employees. Any such regulations shall prohibit pregnancy from being
- 9 considered a preexisting condition.
- 10 Sec. 2. (NEW) (Effective from passage) The Insurance Commissioner

11 shall adopt regulations, on or before July 1, 2020, in accordance with 12 the provisions of chapter 54 of the general statutes, to allow for and 13 facilitate the ability of Connecticut employers and Connecticut 14 residents to purchase short-term disability insurance and family leave 15 income protection insurance offered in or by other states. After the 16 enactment of legislation by a state legislature of another state that 17 permits residents of other states who work outside the state to 18 participate in that state's paid family leave program, the Insurance 19 Commissioner shall negotiate with the appropriate agency or agencies 20 of such states to enter into an agreement to allow employers and

Sec. 3. (NEW) (Effective from passage) Upon written request by the employee, an employer may withhold from an employee's wages an amount to purchase in whole or in part individual or group short-term disability and family leave income protection coverage for employees.

residents of Connecticut to participate in such programs.

- Sec. 4. Section 31-51kk of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2020*):
- As used in sections 31-51kk to 31-51qq, inclusive, as amended by this act:
- (1) "Eligible employee" means an employee who has been employed
 (A) for at least twelve months by the employer with respect to whom
 leave is requested; and (B) for at least one thousand hours of service
 with such employer during the twelve-month period preceding the
 first day of the leave;
- 35 (2) "Employ" includes to allow or permit to work;
- (3) "Employee" means any person engaged in service to an employerin the business of the employer;
- 38 (4) "Employer" means a person engaged in any activity, enterprise 39 or business who employs seventy-five or more employees, and 40 includes any person who acts, directly or indirectly, in the interest of

an employer to any of the employees of such employer and any successor in interest of an employer, but shall not include the state, a municipality, a local or regional board of education, or a private or parochial elementary or secondary school. The number of employees of an employer shall be determined on October first annually;

- (5) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits and pensions, regardless of whether such benefits are provided by practice or written policy of an employer or through an "employee benefit plan", as defined in Section 1002(3) of Title 29 of the United States Code;
- 53 (6) "Grandchild" means a grandchild related to a person by (A)
 54 blood, (B) marriage, (C) adoption by a child of the grandparent, or (D)
 55 foster care by a child of the grandparent;
 - (7) "Grandparent" means a grandparent related to a person by (A) blood, (B) marriage, (C) adoption of a minor child by a child of the grandparent, or (D) foster care by a child of the grandparent;
 - [(6)] (8) "Health care provider" means (A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; (B) a podiatrist, dentist, psychologist, optometrist or chiropractor authorized to practice by the state in which such person practices and performs within the scope of the authorized practice; (C) an advanced practice registered nurse, nurse practitioner, nurse midwife or clinical social worker authorized to practice by the state in which such person practices and performs within the scope of the authorized practice; (D) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; (E) any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; (F) a health care provider as defined in subparagraphs (A) to

73 (E), inclusive, of this subdivision who practices in a country other than

- 74 the United States, who is licensed to practice in accordance with the
- 75 laws and regulations of that country; or (G) such other health care
- 76 provider as the Labor Commissioner determines, performing within
- 77 the scope of the authorized practice. The commissioner may utilize any
- 78 determinations made pursuant to chapter 568;
- 79 [(7)] (9) "Parent" means a biological parent, foster parent, adoptive
- 80 parent, stepparent, parent-in-law or legal guardian of an eligible
- 81 employee or an eligible employee's spouse, or an individual who stood
- 82 in loco parentis to an employee when the employee was a son or
- 83 daughter;
- [(8)] (10) "Person" means one or more individuals, partnerships,
- 85 associations, corporations, business trusts, legal representatives or
- 86 organized groups of persons;
- [(9)] (11) "Reduced leave schedule" means a leave schedule that
- 88 reduces the usual number of hours per workweek, or hours per
- 89 workday, of an employee;
- 90 [(10)] (12) "Serious health condition" means an illness, injury,
- 91 impairment, or physical or mental condition that involves (A) inpatient
- 92 care in a hospital, hospice, nursing home or residential medical care
- 93 facility; or (B) continuing treatment, including outpatient treatment, by
- 94 a health care provider;
- 95 (13) "Sibling" means a brother or sister related to a person by (A)
- 96 blood, (B) marriage, (C) adoption by a parent of the person, or (D)
- 97 <u>foster care placement;</u>
- 98 [(11)] (14) "Son or daughter" means a biological, adopted or foster
- 99 child, stepchild, legal ward, or, in the alternative, a child of a person
- standing in loco parentis, who is (A) under eighteen years of age; or (B)
- eighteen years of age or older and incapable of self-care because of a
- 102 mental or physical disability; and

[(12)] (15) "Spouse" means a [husband or wife, as the case may be]
person to whom one is legally married or a person to whom one
maintains a spousal like relationship including, but not limited to,
cohabitation.

- Sec. 5. Section 31-51*ll* of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2020*):
- 109 (a) (1) Subject to section 31-51mm, as amended by this act, an eligible employee shall be entitled to a total of sixteen workweeks of 110 111 leave during any twenty-four-month period, such twenty-four-month 112 period to be determined utilizing any one of the following methods: 113 (A) Consecutive calendar years; (B) any fixed twenty-four-month 114 period, such as two consecutive fiscal years or a twenty-four-month 115 period measured forward from an employee's first date of 116 employment; (C) a twenty-four-month period measured forward from 117 an employee's first day of leave taken under sections 31-51kk to 31-118 51qq, inclusive, as amended by this act; or (D) a rolling twenty-four-119 month period measured backward from an employee's first day of 120 leave taken under sections 31-51kk to 31-51qq, inclusive, as amended 121 by this act.
- 122 (2) Leave under this subsection may be taken for one or more of the 123 following reasons:
- (A) Upon the birth of a son or daughter of the employee;
- 125 (B) Upon the placement of a son or daughter with the employee for 126 adoption or foster care;
- (C) In order to care for the spouse, [or a son,] <u>sibling, son or</u> daughter, [or] <u>grandparent, grandchild,</u> parent of the employee, if such spouse, [son,] <u>sibling, son or</u> daughter, [or] <u>grandparent, grandchild,</u> parent has a serious health condition;
- 131 (D) Because of a serious health condition of the employee;
- 132 (E) In order to serve as an organ or bone marrow donor; or

(F) Because of any qualifying exigency, as determined in regulations adopted by the United States Secretary of Labor, arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call or order to active duty, in the armed forces, as defined in subsection (a) of section 27-103.

- (b) Entitlement to leave under subparagraph (A) or (B) of subdivision (2) of subsection (a) of this section may accrue prior to the birth or placement of a son or daughter when such leave is required because of such impending birth or placement.
- (c) (1) Leave under subparagraph (A) or (B) of subdivision (2) of subsection (a) of this section for the birth or placement of a son or daughter may not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer agree otherwise. Subject to subdivision (2) of this subsection concerning an alternative position, subdivision (2) of subsection (f) of this section concerning the duties of the employee and subdivision (5) of subsection (b) of section 31-51mm, as amended by this act, concerning sufficient certification, leave under subparagraph (C) or (D) of subdivision (2) of subsection (a) or under subsection (i) of this section for a serious health condition may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this subsection shall not result in a reduction of the total amount of leave to which the employee is entitled under subsection (a) of this section beyond the amount of leave actually taken.
- (2) If an employee requests intermittent leave or leave on a reduced leave schedule under subparagraph (C), (D) or (E) of subdivision (2) of subsection (a) or under subsection (i) of this section that is foreseeable based on planned medical treatment, the employer may require the employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that (A) has equivalent pay and benefits, and (B) better accommodates recurring periods of leave than the regular employment position of the

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employee, provided the exercise of this authority shall not conflict with any provision of a collective bargaining agreement between such employer and a labor organization which is the collective bargaining representative of the unit of which the employee is a part.

- (d) Except as provided in subsection (e) of this section, leave granted under subsection (a) of this section may consist of unpaid leave.
 - (e) (1) If an employer provides paid leave for fewer than sixteen workweeks, the additional weeks of leave necessary to attain the sixteen workweeks of leave required under sections 5-248a and 31-51kk to 31-51qq, inclusive, as amended by this act, may be provided without compensation.
 - (2) (A) An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave or family leave of the employee for leave provided under subparagraph (A), (B) or (C) of subdivision (2) of subsection (a) of this section for any part of the sixteen-week period of such leave under said subsection or under subsection (i) of this section for any part of the twenty-six-week period of such leave.
 - (B) An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C), (D) or (E) of subdivision (2) of subsection (a) of this section for any part of the sixteen-week period of such leave under said subsection or under subsection (i) of this section for any part of the twenty-six-week period of leave, except that nothing in section 5-248a or sections 31-51kk to 31-51qq, inclusive, as amended by this act, shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.
 - (f) (1) In any case in which the necessity for leave under subparagraph (A) or (B) of subdivision (2) of subsection (a) of this

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section is foreseeable based on an expected birth or placement of a son or daughter, the employee shall provide the employer with not less than thirty days' notice, before the date of the leave is to begin, of the employee's intention to take leave under said subparagraph (A) or (B), except that if the date of the birth or placement of a son or daughter requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

- (2) In any case in which the necessity for leave under subparagraph (C), (D) or (E) of subdivision (2) of subsection (a) or under subsection (i) of this section is foreseeable based on planned medical treatment, the employee (A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the spouse, sibling, son [,] or daughter, [spouse or] grandparent, grandchild, parent of the employee, as appropriate; and (B) shall provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave under said subparagraph (C), (D) or (E) or said subsection (i), except that if the date of the treatment requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.
- (g) In any case in which [a husband and wife] two spouses entitled to leave under subsection (a) of this section are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to sixteen workweeks during any twenty-four-month period, if such leave is taken: (1) Under subparagraph (A) or (B) of subdivision (2) of subsection (a) of this section; or (2) to care for a sick sibling, son or daughter, grandparent, grandchild, parent under subparagraph (C) of said subdivision. In any case in which [a husband and wife] two spouses entitled to leave under subsection (i) of this section are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to twenty-six workweeks during any twelve-month period.

232 (h) Unpaid leave taken pursuant to sections 5-248a and 31-51kk to 31-51qq, inclusive, <u>as amended by this act</u>, shall not be construed to affect an employee's qualification for exemption under chapter 558.

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- (i) Subject to section 31-51mm, as amended by this act, an eligible employee who is the spouse, son or daughter, parent or next of kin of a current member of the armed forces, as defined in section 27-103, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is on the temporary disability retired list for a serious injury or illness incurred in the line of duty shall be entitled to a one-time benefit of twenty-six workweeks of leave during any twelve-month period for each armed forces member per serious injury or illness incurred in the line of duty. Such twelve-month period shall commence on an employee's first day of leave taken to care for a covered armed forces member and end on the date twelve months after such first day of leave. For the purposes of this subsection, (1) "next of kin" means the armed forces member's nearest blood relative, other than the covered armed forces member's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the armed forces member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered armed forces member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave, in which case the designated individual shall be deemed to be the covered armed forces member's next of kin; and (2) "son or daughter" means a biological, adopted or foster child, stepchild, legal ward or child for whom the eligible employee or armed forces member stood in loco parentis and who is any age.
- 260 (j) Leave taken pursuant to sections 31-51kk to 31-51qq, inclusive, <u>as</u> 261 <u>amended by this act,</u> shall not run concurrently with the provisions of 262 section 31-313.
- 263 (k) Notwithstanding the provisions of sections 5-248a and 31-51kk 264 to 31-51qq, inclusive, <u>as amended by this act</u>, all further rights granted

- 265 by federal law shall remain in effect.
- Sec. 6. Section 31-51mm of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):
- 268 (a) An employer may require that request for leave based on a 269 serious health condition in subparagraph (C) or (D) of subdivision (2) 270 of subsection (a) of section 31-51ll, as amended by this act, or leave 271 based on subsection (i) of section 31-51ll, as amended by this act, be 272 supported by a certification issued by the health care provider of the 273 eligible employee or of the spouse, sibling, son [,] or daughter, 274 [spouse] grandparent, grandchild, parent, [or] next of kin of the 275 employee, as appropriate. The employee shall provide, in a timely 276 manner, a copy of such certification to the employer.
- (b) Certification provided under subsection (a) of this section shall be sufficient if it states:
- 279 (1) The date on which the serious health condition commenced;
- 280 (2) The probable duration of the condition;

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- 281 (3) The appropriate medical facts within the knowledge of the 282 health care provider regarding the condition;
 - (4) (A) For purposes of leave under subparagraph (C) of subdivision (2) of subsection (a) of section 31-51*ll*, as amended by this act, a statement that the eligible employee is needed to care for the spouse, sibling, son [,] or daughter, [spouse or] grandparent, grandchild, parent and an estimate of the amount of time that such employee needs to care for the spouse, sibling, son [,] or daughter, [spouse or] grandparent, grandchild, parent; and (B) for purposes of leave under subparagraph (D) of subdivision (2) of subsection (a) of section 31-51*ll*, as amended by this act, a statement that the employee is unable to perform the functions of the position of the employee;
- 293 (5) In the case of certification for intermittent leave or leave on a 294 reduced leave schedule for planned medical treatment, the dates on

which such treatment is expected to be given and the duration of such treatment;

- (6) In the case of certification for intermittent leave or leave on a reduced leave schedule under subparagraph (D) of subdivision (2) of subsection (a) of section 31-51*ll*, as amended by this act, a statement of the medical necessity of the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule;
- (7) In the case of certification for intermittent leave or leave on a reduced leave schedule under subparagraph (C) of subdivision (2) of subsection (a) of section 31-51*ll*, as amended by this act, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the spouse, sibling, son [,] or daughter, grandparent, grandchild, parent [or spouse] who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule; and
 - (8) In the case of certification for intermittent leave or leave on a reduced leave schedule under subsection (i) of section 31-51*ll*, <u>as amended by this act</u>, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the spouse, son or daughter, parent or next of kin who is a current member of the armed forces, as defined in section 27-103, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is on the temporary disability retired list, for a serious injury or illness incurred in the line of duty, and the expected duration and schedule of the intermittent leave or reduced leave schedule. For the purposes of this subsection, "son or daughter" and "next of kin" have the same meanings as provided in subsection (i) of section 31-51*ll*, <u>as amended by this act</u>.
- 325 (c) (1) In any case in which the employer has reason to doubt the 326 validity of the certification provided under subsection (a) of this

LCO No. 9371 2019LC009371-R00-AMD.DOCX **11** of 15

section for leave under subparagraph (C) or (D) of subdivision (2) of subsection (a) or under subsection (i) of section 31-51*ll*, as amended by this act, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) of this section for such leave.

- (2) A health care provider designated or approved under subdivision (1) of this subsection shall not be employed on a regular basis by the employer.
- (d) (1) In any case in which the second opinion described in subsection (c) of this section differs from the opinion in the original certification provided under subsection (a) of this section, the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b) of this section.
- (2) The opinion of the third health care provider concerning the information certified under subsection (b) of this section shall be considered to be final and shall be binding on the employer and the employee.
- (e) The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis, provided the standards for determining what constitutes a reasonable basis for recertification may be governed by a collective bargaining agreement between such employer and a labor organization which is the collective bargaining representative of the unit of which the worker is a part if such a collective bargaining agreement is in effect. Unless otherwise required by the employee's health care provider, the employer may not require recertification more than once during a thirty-day period and, in any case, may not unreasonably require recertification. The employer shall pay for any recertification that is not covered by the employee's health insurance.

359 Sec. 7. Section 31-5100 of the general statutes is repealed and the 360 following is substituted in lieu thereof (*Effective July 1, 2021*):

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Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of sections 5-248a and 31-51kk to 31-51qq, inclusive, as amended by this act, shall be maintained as medical records pursuant to chapter 563a, except that: (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations; (2) first aid and safety personnel may be informed, when appropriate, if the employee's physical or medical condition might require emergency treatment; and (3) government officials investigating compliance with sections 5-248a and 31-51kk to 31-51qq, inclusive, as amended by this act, or other pertinent law shall be provided relevant information upon request.

- 374 Sec. 8. Section 31-51pp of the general statutes is repealed and the 375 following is substituted in lieu thereof (*Effective July 1, 2021*):
- 376 (a) (1) It shall be a violation of sections 5-248a and 31-51kk to 31-377 51qq, inclusive, as amended by this act, for any employer to interfere 378 with, restrain or deny the exercise of, or the attempt to exercise, any 379 right provided under said sections.
 - (2) It shall be a violation of sections 5-248a and 31-51kk to 31-51qq, inclusive, as amended by this act, for any employer to discharge or cause to be discharged, or in any other manner discriminate, against any individual for opposing any practice made unlawful by said sections or because such employee has exercised the rights afforded to such employee under said sections.
- 386 (b) It shall be a violation of sections 5-248a and 31-51kk to 31-51qq, 387 inclusive, as amended by this act, for any person to discharge or cause to be discharged, or in any other manner discriminate, against any individual because such individual: 389

2019LCO09371-R00-AMD.DOCX LCO No. 9371 13 of 15

390 (1) Has filed any charge, or has instituted or caused to be instituted 391 any proceeding, under or related to sections 5-248a and 31-51kk to 31-392 51qq, inclusive, as amended by this act;

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- (2) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under said sections; or
- (3) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under said sections.
- (c) (1) It shall be a violation of sections 31-51kk to 31-51qq, inclusive, as amended by this act, for any employer to deny an employee the right to use up to two weeks of accumulated sick leave or to discharge, threaten to discharge, demote, suspend or in any manner discriminate against an employee for using, or attempting to exercise the right to use, up to two weeks of accumulated sick leave to attend to a serious health condition of a spouse, sibling, son or daughter, [spouse or] grandparent, grandchild, parent of the employee, or for the birth or adoption of a son or daughter of the employee. For purposes of this subsection, "sick leave" means an absence from work for which compensation is provided through an employer's bona fide written policy providing compensation for loss of wages occasioned by illness, but does not include absences from work for which compensation is provided through an employer's plan, including, but not limited to, a short or long-term disability plan, whether or not such plan is selfinsured.
 - (2) Any employee aggrieved by a violation of this subsection may file a complaint with the [Labor] Insurance Commissioner alleging violation of the provisions of this subsection. Upon receipt of any such complaint, the commissioner shall hold a hearing. After the hearing, the commissioner shall send each party a written copy of the commissioner's decision. The commissioner may award the employee all appropriate relief, including rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment

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of employee benefits to which the employee otherwise would have been eligible if a violation of this subsection had not occurred. Any party aggrieved by the decision of the commissioner may appeal the decision to the Superior Court in accordance with the provisions of chapter 54.

(3) The rights and remedies specified in this subsection are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other provisions of law."

This act shall take effect as follows and shall amend the following		
sections:		
	I	
Section 1	from passage	New section
Sec. 2	from passage	New section
Sec. 3	from passage	New section
Sec. 4	July 1, 2020	31-51kk
Sec. 5	July 1, 2020	31-51 <i>ll</i>
Sec. 6	July 1, 2021	31-51mm
Sec. 7	July 1, 2021	31-5100
Sec. 8	July 1, 2021	31-51pp

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